

Office of the Secretary, HUD

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(1) Any information referred to in Section 102(b) that the applicant should have disclosed with respect to the application, but did not disclose;

(2) Any information referred to in Section 102(b) that initially arose after the time for making disclosures under that subsection, including the name and pecuniary interest of any person who did not have a pecuniary interest in the project or activity that exceeded the threshold in Section 102(b) at the time of the application, but that subsequently exceeded the threshold.

(b) With regard to changes in information that was disclosed under Sections 102(b) or 102(c):

(1) For programs administered by the Assistant Secretary for Community Planning and Development:

(i) Any change in other government assistance covered by Section 102(b) that exceeds the amount of all assistance that was previously disclosed by the lesser of \$250,000 or 10 percent of the assistance;

(ii) Any change in the expected sources or uses of funds that exceed the amount of all previously disclosed sources or uses by the lesser of \$250,000 or 10 percent of previously disclosed sources;

(2) For all other programs:

(i) Any change in other government assistance under Section 102(b)(1) that exceeds the amount of assistance that was previously disclosed;

(ii) Any change in the pecuniary interest of any person under Section 102(b)(2) that exceeds the amount of all previously disclosed interests by the lesser of \$50,000 or 10 percent of such interest;

(iii) For all projects receiving a tax credit under Federal, State or local law, any change in the expected sources or uses of funds that were previously disclosed;

(iv) For all other projects:

(A) Any change in the expected source of funds from a single source that exceeds the lesser of the amount previously disclosed for that source of funds by \$250,000 or 10 percent of the funds previously disclosed for that source;

(B) Any change in the expected sources of funds from all sources previously disclosed that exceeds the less-

er of \$250,000 or 10 percent of the amounts previously disclosed from all sources of funds;

(C) Any change in a single expected use of funds that exceeds the lesser of \$250,000 or 10 percent of the previously disclosed use;

(D) Any change in the use of all funds that exceeds the lesser of \$250,000 or 10 percent of the previously disclosed uses for all funds.

(c) *Period of coverage.* For purposes of updating of Section 102(c), an application for assistance will be considered to be pending from the time the application is submitted until the Department communicates its decision with respect to the selection of the applicant.

(Approved by the Office of Management and Budget under control number 2510-0011)

§ 4.13 Limitation of assistance subject to section 102(d).

(a) In making the certification for assistance subject to Section 102(d), the Secretary will consider the aggregate amount of assistance from the Department and from other sources that is necessary to ensure the feasibility of the assisted activity. The Secretary will take into account all factors relevant to feasibility, which may include, but are not limited to, past rates of returns for owners, sponsors, and investors; the long-term needs of the project and its tenants; and the usual and customary fees charged in carrying out the assisted activity.

(b) If the Department determines that the aggregate of assistance within the jurisdiction of the Department to a housing project from the Department and from other governmental sources exceeds the amount that the Secretary determines is necessary to make the assisted activity feasible, the Department will consider all options available to enable it to make the required certification, including reductions in the amount of Section 8 subsidies. The Department also may impose a dollar-for-dollar, or equivalent, reduction in the amount of HUD assistance to offset the amount of other government assistance. In grant programs, this could result in a reduction of any grant amounts not yet drawn down. The Department may make these adjustments immediately, or in conjunction with

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servicing actions anticipated to occur in the near future (e.g., in conjunction with the next annual adjustment of Section 8 rents).

(c) If an applicant does not meet the \$200,000 disclosure requirement in § 4.7(b), an applicant must certify whether there is, or is expected to be made, available with respect to the housing project any other governmental assistance. The Department may also require any applicant subject to this subpart A to submit such a certification in conjunction with the Department's processing of any subsequent servicing action on that project. If there is other government assistance for purposes of the two preceding sentences, the applicant must submit such information as the Department deems necessary to make the certification and subsequent adjustments under Section 102(d).

(d) The certification under Section 102(d) shall be retained in the official file for the housing project.

Subpart B—Prohibition of Advance Disclosure of Funding Decisions

§ 4.20 Purpose.

The provisions of this subpart B are authorized under section 103 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (42 U.S.C. 3537a) (hereinafter, Section 103). Both the provisions of Section 103 and this subpart B apply for the purposes of Section 103. Section 103 proscribes direct or indirect communication of certain information during the selection process by HUD employees to persons within or outside of the Department who are not authorized to receive that information. The purpose of the proscription is to preclude giving an unfair advantage to applicants who would receive information not available to other applicants or to the public. Section 103 also authorizes the Department to impose a civil money penalty on a HUD employee who knowingly discloses protected information, if such a violation of Section 103 is material, and authorizes the Department to sanction the person who received information improperly by, among other

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things, denying assistance to that person.

§ 4.22 Definitions.

Application means a written request for assistance regardless of whether the request is in proper form or format.

Assistance does not include any contract (e.g., a procurement contract) that is subject to the Federal Acquisition Regulation (FAR) (48 CFR ch. 1).

Disclose means providing information directly or indirectly to a person through any means of communication.

Employee includes persons employed on a full-time, part-time, or temporary basis, and special government employees as defined in 18 U.S.C. 202. The term applies whether or not the employee is denoted as an officer of the Department. "Employee" is to be construed broadly to include persons who are retained on a contractual or consultative basis under an Office of Human Resources appointment. However, "employee" does not include an independent contractor, e.g., a firm or individual working under the authority of a procurement contract.

Material or materially means in some influential or substantial respect or having to do more with substance than with form.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

Selection process means the period with respect to a selection for assistance that begins when the HUD official responsible for awarding the assistance involved, or his or her designee, makes a written request (which includes the selection criteria to be used in providing the assistance) to the Office of General Counsel (OGC) to prepare the NOFA, solicitation, or request for applications for assistance for publication in the FEDERAL REGISTER. The period includes the evaluation of applications, and concludes with the announcement of the selection of recipients of assistance.

§ 4.24 Scope.

(a) *Coverage*. The prohibitions against improper disclosure of covered selection information apply to any person